

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

|                                 |   |                      |
|---------------------------------|---|----------------------|
| Kevin Fernandez,                | ) |                      |
|                                 | ) |                      |
| Plaintiff,                      | ) | <b>ORDER</b>         |
|                                 | ) |                      |
| vs.                             | ) |                      |
|                                 | ) | Case No. 1:12-cv-161 |
| State of North Dakota, et. al., | ) |                      |
|                                 | ) |                      |
| Defendants.                     | ) |                      |

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Before the court is a “Motion for Enlargement of Time to Complete Discovery and/or Motion to Amend Scheduling Order” filed by plaintiff Kevin Fernandez (“Fernandez”) on December 19, 2013. For the reasons set forth below, the motion is granted.

**I. BACKGROUND**

On October 24, 2013, Fernandez filed a “Motion to Clarify Scheduling Order Doc. #40” and “Motion to Exceed the Number of Interrogatories Plaintiff May Serve On Defendants.” On December 9, 2013, the court issued an order granting the motions in part and permitting each side to serve a total of 50 interrogatories.

On December 15, 2013, the deadline for completing discovery and filing discovery motions lapsed. On December 19, 2013, Fernandez filed a motion requesting an extension of the discovery deadline, the stated basis being:

Plaintiff has served a set of interrogatories on Defendants simultaneously with the instant motion. It will take up to thirty days for Defendants to answer the interrogatories. Additionally, Plaintiff may need to challenge the content of these responses or any objections which require a motion to compel. Because of the mailing delay, plaintiff will not receive defendants responses until about January 20, 2014. Plaintiff must then write Defense Counsel to dispute the responses and await the responses before filing said motion. FRCP 37(A); D.N.D. Civ. L.R. 37.1(A) Additionally, Plaintiff needs time to perfect the motion to compel which the court

granted in order [of December 9, 2013]. There is no possible way for Plaintiff to perfect a motion to compel in four (4) days. Plaintiff just received the Court's Order [of December 9, 2013] on December 12, 2013. Because of Plaintiff's incarceration and the law library access he has, he will need the additional time to perfect said motion . . . .

(Docket No. 109).

## **II. DISCUSSION**

More than fourteen days have lapsed since Fernandez filed his motion. As defendants have not filed a formal response, their silence may be deemed an admission that the motion was well taken. See D.N.D. Civ. L. R. 7.1(F). In any event, the court finds that the extension proposed by Fernandez to be reasonable under the circumstances. Consequently, the court shall extend the discovery deadline until February 21, 2014.

## **III. CONCLUSION**

Fernandez's "Motion for Enlargement of Time to Complete Discovery and/or Motion to Amend Scheduling Order" (Docket No. 109) is **GRANTED**. The deadline for completion of fact discovery and for filing discovery motions shall be extended until February 21, 2014.

**IT IS SO ORDERED.**

Dated this 30th day of January, 2014.

/s/ Charles S. Miller, Jr.  
Charles S. Miller, Jr., Magistrate Judge  
United States District Court